

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

EVER BETTER EATING, INC.,

Plaintiff,

v.

Case No: 8:21-cv-1798-CEH-CPT

JAMA'S EXPRESS LLC, COYOTE
LOGISTICS, LLC, EVENS MITILUS,
FASTWAY TRANSPORT, LLC and
JUNIOR BORGELLA,

Defendants.

ORDER

This cause comes before the Court on the Order to Show Cause of Magistrate Judge Christopher P. Tuite, dated August 8, 2023 (Doc. 88). Because Plaintiff Ever Better Eating, Inc., has failed to respond or request additional time to do so, this action is due to be dismissed, without prejudice.

DISCUSSION

In federal court, a corporation “is an artificial entity that can act only through agents, cannot appear *pro se*, and must be represented by counsel.” *Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985); *see also, e.g., Potter v. Altman*, 647 F. App'x 974, 976 (11th Cir. 2016); *Energy Lighting Mgmt., Ltd. Liab. Co. v. Kinder*, 363 F.Supp.2d 1331, 1332 (M.D. Fla. 2005). For this reason, the Local Rules of the Middle District of Florida provide that “[a] party, other than a natural person, can appear through [a] lawyer only.” Local Rule 2.02(b)(2), Middle District of Florida. Corporate plaintiffs

who do not obtain counsel despite being given an opportunity to do so will be dismissed from the case. *See, e.g., West Coast Fiberglass Specialist, LLC v. Krebs*, No. 2:20-cv-879, 2021 WL 1342385, *2, *4 (M.D. Fla. Feb. 18, 2021); *Alfaro v. Anheuser-Busch, LLC*, No. 3:14-cv-977, 2017 WL 1683185, *1 (M.D. Fla. Feb. 24, 2017), *report and recommendation adopted by* 2017 WL 1653675 (May 2, 2017).

In addition, a district court may dismiss a plaintiff's claims pursuant to Rule 41(b) of the Federal Rules of Civil Procedure or the court's inherent authority to manage its docket. *Betty K Agencies, Ltd. v. M/V MONADA*, 432 F.3d 1333, 1337 (11th Cir. 2005). Under Rule 41(b), "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss this action or any claim against it." Fed. R. Civ. P. 41(b). The Eleventh Circuit has recognized that a district court may dismiss an action *sua sponte* for the plaintiff's failure to prosecute his case or obey a court order under Rule 41(b). *Betty K Agencies, Ltd.*, 432 F.3d at 1337.

Plaintiff Ever Better Eating, Inc., a corporation, was represented by counsel for most of the pendency of this action. In May and June 2023, counsel moved to withdraw, citing irreconcilable differences. Docs. 75, 78. Magistrate Judge Tuite granted the motion to withdraw on June 26, 2023. Doc. 85. Judge Tuite directed Plaintiff to "inform the Court whether it has retained a new lawyer" "no later than July 24, 2023," and reminded Plaintiff that it could not proceed *pro se* and must be represented by counsel. *Id.* at 2. The magistrate court further cautioned Plaintiff that "a failure to obtain successor counsel may result in dismissal of its claims." *Id.*

Plaintiff did not file anything in response to the June 26 order. Accordingly, on August 8, 2023, Judge Tuite ordered Plaintiff to show cause as to why it did not comply with the prior order, via a written response filed “no later than September 7, 2023.” Doc. 88 at 2. Judge Tuite again warned Plaintiff that “a failure to timely submit a response may result in the dismissal of its pleadings without further notice.” *Id.*

To date, Plaintiff has not responded to the Order to Show Cause nor requested additional time to do so. Plaintiff also has not demonstrated that it has obtained successor counsel. Accordingly, pursuant to Fed. R. Civ. P. 41(b), the action is due to be dismissed without prejudice. It is **ORDERED**:

1. This action is **DISMISSED, without prejudice.**
2. The Clerk of Court is directed to terminate all pending motions and **CLOSE** this case.

DONE and ORDERED in Tampa, Florida on September 13, 2023.


Charlene Edwards Honeywell
United States District Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties